IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6321 to 6351 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

BECHARBHAI BHAGWANBHAI PATEL DECD. THRO' HEIRS JETHABHAI

Appearance:

Ms R V Acharya, AGP for Petitioners

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 20/03/2001

C A V (COMMON) JUDGEMENT

This group of 31 First Appeals has been filed by the State of Gujarat against a common judgment and award dated 30.6.1998 recorded by the learned Asstt. Judge, Sabarkantha District, at Himatnagar in Land Reference Cases No.354 to 384 of 1991 under which the learned Judge allowed the said Land References and enhanced the amount of compensation. The facts of the case leading to these

appeals may be briefly stated as follows:

2. The lands belonging to the respondents herein situated at village Mota Kotda in Idar Taluka of Sabarkantha District came to be acquired by the appellant Land Acquisition Officer for a public purpose namely; for construction of Khed-Tasia road. Necessary notification was issued under Section 4(1) of the Land Acquisition Act, 1894 (for short, 'the Act') and after following due procedure of law, the award was made in Land Acquisition Reference Case No.24/89 on 25.7.1991. Under the said award, the Special Land Acquisition Officer directed compensation to be paid to the respondents as follows:

(1) Rs.80/- per Are for irrigated land
(2) Rs.60/- " for non-irrigated land
(3) Re.1/- " for waste land
(4) Re.1/- " for sub-passage compen-
sation.

On receiving the copies of the awards of the Land Acquisition Officer, the respondents were dissatisfied by the amount awarded under that award and, therefore, they submitted applications to the Collector for making reference to the Court under Section 18 of the Act. The Collector accordingly made reference and, therefore, the said matters came to be registered before the District Court, Sabarkantha at Himatnagar by way of Land Reference Cases No.354 to 384 of 1991. On receipt of the said Land Reference cases, the Court issued notices to the appellants. They submitted written statement and contended that the award was legal and proper and necessary aspects were taken into account by the Land Acquisition Officer and, therefore, there was no defect of law or in facts in making the said award. That therefore, the References were not tenable and hence the same may be dismissed.

3. The Reference Court framed necessary issues and after recording the evidence produced by the parties, the Reference Court directed that the compensation may be awarded to the respondents herein as follows:

(i) Rs.910/- per Are for irrigated land
(ii) Rs.567/- " non-irrigated land
(iii) Rs.09/- " wasteland

Feeling aggrieved by the said judgment and award of the Reference Court, the appellants herein have preferred these appeals before this court under Section 54 of the Act read with Section 96 of the Code of Civil Procedure,

1908.

4. During the course of her argument Ms. R V Acharya, appearing as Asstt. Government Pleader on behalf of the appellants herein, has taken me through the judment and award of the Reference Court. It has been contended by her that the amount awarded is on higher side and, therefore, it is required to be substantially and sizeably reduced. However, on going through the judgment and award of the Reference Court, it could be noticed that the reference court has taken into consideration the previous award made in respect of village Sabli. The judgment further shows that village Sabli and village Mota Kotda are both situated in such a way that they share a common boundary.

5. It is also a matter of record that village Sabli is at a distance of 2 to 3 kms. from village Mota Kotda and the acquired land is situated at a distance of one to one and half k.m. from village Sabli. The evidence on record goes to show that these two lands are comparable and that their fertility is identical. It is further contended that for all purpose, the lands situated in these two villages are similar and therefore, the sale instances or the awards in respect of the lands situated at village Sabli can be considered as relevant consideration for the purpose of deciding the market price of the lands situated in Mota Kotda. On the other hand, the appellant do not appear to have produced any material to show that the lands of village Sabli and those of village Mota Kotda are not comparable and they were not carrying the same value. The appellants also do not appear to have produced any sale instance showing the market price of the lands situated at village Mota Kotda. It is pertinent to note that award at Exh.52 refers to the sale instance but the appellants have not produced copies of those sale instances. The appellants also have not produced evidence of the vendor and vendee by examining them before the court. In the aforesaid fact-situation this group appeal is required to be decided on merit.

6. It is pertinent to note that the respondents herein have stated on oath that village Sabli is at a distance of 2 to 3 kms. from village Mota Kotda and the acquired lands are actually located at a very short distance of 1 to one and half kms. from village Sabli. The respondents herein have deposed before the court that the lands of the two villages are qualitatively comparable. On the other hand, they have further stated that the lands of village Sabli are inferior in quality

and, therefore, the lands of village Mota Kotda would fetch more value. This aspects of the evidence of this witness do not appear to have been controverted by counter attack. Nothing has been brought out from the cross-examination of the witness in order to enable the appellants to argue that the lands of these two villages are not comparable and that the lands of Mota Kotda are inferior in quality than those of village Sabli. The appellants have also not produced any material to show that the sale instance or the awards on account of which the lands with respect to the lands of village Sabli could not be taken into consideration while deciding the value of the lands of Mota Kotda.

7. Once we refer the judgment of the reference court, it clearly transpires that the reference court has relied upon previous judgment and awards in respect of village Sabli. There is a reference to previous judgment at exh.41 dated 22.12.1992. It is transpired from the judgment of the reference court that the notification under section 4(1) of the Act was issued on 27.5.1982 and there also the award of Land references Case Bo.952/87 was relied upon. The said award was confirmed by the High court in first Appeal No.1119/90 to 1129/90. This court had dismissed those appeals of the State confirming the award of the reference court. It is further transpired from the said judgment that in the said matter, the ultimate award which was confirmed by this court showed that compensation was awarded at Rs.600/- per Are in respect of irrigated land, Rs.380/- per Are in respect of non-irrigated land and compensation was also awarded at Rs.6/per Are in respect of waste land. The respondent had also shown some evidence with respect to the lands of village Bhadresar, but the trial court did not depend upon the evidence with respect to the lands of village Bhadresar. Therefore, this court is required to consider the lands of village Sabli only. The trial court has also relied upon a decision of Special Land Acquisition Officer v. Motibhai Mohanbhai, reported in 1997 (2) GLH 773. This court had observed in the said judgment that in case the sale instance are not available from the same village, then sale instances of adjoining village in the vicinity can be considered provided the lands are comparable. This court further observed that there is nothing wrong in adopting a gradual rise in price at 10% p.a. is taken into account. The reference court has considered the said judgment of this court and has, therefore, considered the sale instance and award of village Sabli for the purpose of deciding the market value of the lands situated at Mota Kotda. The judgment of the reference court makes it clear that there was

nothing on record to show that there were some sale instance with respect to the lands of Mota Kotda. No award has also been produced with respect to any lands of Mota Kotda. Therefore, there was no material before the reference court to assess the market value of the lands situated at Mota Kotda. Therefore, the reference court was required to consider the market value of the lands situated at village Sabli which is adjacent to the village Mota Kotda. Considering the above principles and the aforesaid decision enunciated by this court, the reference court was justified in taking into account the market value of the lands of village Sabli for the purpose of assessing the market value of the land of Mota Kotda. After considering the aforesaid market value, the reference court has also considered that the said value was fixed about 6 to 7 years back and, therefore, annual increase at 10% per annum has been considered by the reference court in view of the principles enunciated in the aforesaid decision of this court. Once the said principles are applied, then naturally the market value of the land - irrigated and non-irrigated and waste land will have to be given increase by 10% per annum, which would amount to increase by nearly 60% and if that is done, then the market value fixed by the reference court cannot be said to be on the higher side. If we consider Rs.600/per Are as market value in the year 1982 then by by adding the said amount at 10% p.a. the market value will not be less than Rs.990/- per are for irrigated land. Same way, the market value of non-irrigated land will naturally come to Rs.627/and the market value of waste land would come to Rs.10/-. Deducting the amount already awarded, the net value will be in accordance with the award made by the Reference Court i.e. Rs.627/-, 567 and 9/per Are in respect of irrigated land, non-irrigated and waste land respectively. Under the aforesaid facts and circumstances, it cannot be said that the award made by the reference court awarding the aforesaid additional amount is in any way illegal or erroneous. Once the judgment and award of the Reference Court are not found to be illegal and erroneous, it cannot be set aide. This shows that there is no merit in the present appeals and consequently, this group of appeal is required to be dismissed. This group of First Appeal is ordered to be dismissed at admission stage itself.

Date: 20.3.2001 [D P Buch, J.]
msp